IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.7.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

W.P.No.19781 of 2002

1. The Indian Council of Medical Research,
   Rep. by its Director General,
   Ansari Nagar, P.B.No.4911,
   New Delhi-110 029.

2. The Tuberculosis Research Centre,
   Rep. by its Director, Eipdemology Unit,
   Mayor V.R.Ramanathan Road,
   Chetput, Chennai-600 031.

.. Petitioners

vs.

1. The Registrar,
   Central Administrative Tribunal,
   Chennai Bench,
   Chennai-600 104.

2. L.Ranganathan
3. T.Krishnamoorthy

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, by calling for the records relating to the order dated 23.11.2001 passed in O.A.No.320 of 1999 on the file of the Central Administrative Tribunal, Chennai Bench (the first respondent herein) and to quash the same in so far as it related to the payment of the arrears of revised scales of pay with effect from 11.9.1989 to 31.3.1997 is concerned.

For petitioners : Mr.M.T.Arunan, ACGSC
For respondent-2 & 3 : Mr.Karthick Rajan

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ORDER

(The Order of the Court was made by F.M.Ibrahim Kalifulla,J)

The petitioners are aggrieved by the order of the Central Administrative Tribunal, dated 23.11.2001 passed in O.A.No.320 of 1999.

2. The second and third respondents herein (the applicants before the Tribunal) joined the services of the petitioners as Junior Machine Operators on 24.12.1981 and 11.1.1982 respectively. They claimed that as

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on 11.9.1989, they were performing the duties and responsibilities as Data Processing staff. By relying upon the Office Memorandum of the Government of India dated 11.9.1989, introducing the pay scale for Electronic Data Processing Posts, the second and third respondents claimed that they were entitled to be re-designated as Data Processing Assistants Grade-B in the scale of pay of Rs.2000-3200 with effect from 11.9.1989 with all consequential benefits such as arrears of pay, etc. They also prayed for setting aside the orders issued by the petitioners herein dated 23.12.1998 and 13.1.1999 respectively, in and by which the claim of the respondents 2 and 3 for the above relief was rejected by the petitioners.

3. Before the Tribunal, a reply affidavit was filed on behalf of the petitioners herein, wherein the issuance of the Office Memorandum dated 11.9.1989 by the Government of India was admitted. It was contended that the nature of duties and responsibilities performed by the respondents 2 and 3 were different from the duties and responsibilities prescribed for the post of Electronic Data Processing Section. It was therefore contended that the claim of the respondents 2 and 3 for the relief of re-designation as Data Processing Assistants Grade-B and the applicability of scale of pay of Rs.2200-3200 with effect from 11.9.1989 was not maintainable.

4. In the Original Application, the Tribunal was stated to have passed two interim orders, dated 8.2.2001 and 11.7.2001. By the earlier interim order dated 8.2.2001, the Tribunal called for a report from the National Informatics Centre (for short, NIC), Planning Commission, Government of India, New Delhi, to consider the case of respondents 2 and 3 separately and report as to how they should be graded. Based on the said interim order dated 8.2.2001, the NIC submitted its report dated 10.5.2001. As the report submitted by the NIC did not comply with the directions of the Tribunal dated 8.2.2001, the Tribunal, by way of another interim order dated 10.7.2001, called for a further report from the NIC. The Tribunal, while calling for such a report, reiterated that the NIC should consider the responsibility entrusted to the applicants before the Tribunal and whether they were discharging the same in the 'stricto-sensu'. Thereafter, the NIC submitted its subsequent report on 12.10.2001. In its report dated 12.10.2001, the NIC, after making a detailed study, came to the conclusion that both the respondents 2 and 3 should be treated as Data Processing Staff and not Data Entry Staff and that they were discharging their duties and responsibilities as Data Processing Staff with effect from 11.9.1989. The said report was also accepted by the Director General of NIC constituted for that purpose.

5. A perusal of the order of the Tribunal discloses that after receipt of the reports, the Original Application was posted on 12.11.2001 and at the instance of the petitioners, it was posted again on 19.11.2001. The Tribunal has recorded in its order as to what transpired on 19.11.2001 in the following words:

> "3. The case was posted before us on 12.11.2001. On that day the learned counsel for the respondents submitted that he would submit his arguments after

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perusing the report of the NIC. Hence the matter was adjourned to 19.11.2001. On that date the learned counsel for the respondents submitted that the report submitted by the NIC being an expert opinion after following the procedure, he cannot have any serious objection and the respondents have no hesitation to accept the same. We have also perused the report and we find that the NIC had deputed three senior officers to the institute wherein the applicants are working and the committee had assessed the duties and responsibilities entrusted to the applicants and how they are discharging the same. Thereafter the committee came to the conclusion that the applicants had to be treated as Data Processing Staff with effect from 11.9.1989. Hence it is proper on our part to accept the same especially when there is no material to come to a different conclusion."

6. It was on the above basis, the Tribunal ultimately passed orders declaring that the respondents 2 and 3 herein, were working as Data Processing Assistants Grade-B and that they are entitled to the pay scale of Rs.2200-3200 with effect from 11.9.1989. After granting such a declaration, the petitioners herein were directed to grant the consequential benefits such as re-fixation of pay, etc. and also the arrears from 11.9.1989.

7. While assailing the said order of the Tribunal in this Writ Petition, the petitioners have confined their challenge only in respect of the direction for consequential payment in difference in pay for the period from 11.9.1989 to 31.3.1997. The said challenge is made on the footing that the Office Memorandum of the Government of India dated 11.9.1989 by itself would not apply to the petitioners herein and that as far as the petitioners herein were concerned, they decided to give effect to the Office Memorandum dated 11.9.1989 only from 1.4.1997 and therefore, the Tribunal ought not to have directed the payment of arrears with effect from the earlier date, namely 11.9.1989.

8. When we consider the above said submission made on behalf of the petitioners, we are not able to countenance the same for more than one reason. In the first place, we find that in the above referred to extracted paragraph of the impugned order of the Tribunal, the Tribunal, after the receipt of the report of the NIC dated 12.10.2001, the result of the report, namely that the respondents 2 and 3 herein were really performing their duties as Data Processing Assistants Grade-B from 11.9.1989, was tacitly admitted on behalf of the petitioners. When once such an admission on behalf of the petitioners was made with their eyes wide open before the Tribunal, it is too late in the day for the petitioners to now turn around and state that irrespective of such categoric admission, they can still contend that the relief should be restricted from a subsequent date and not from the date when the

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Government of India issued the Office Memorandum dated 11.9.1989.

9. We we peruse the Office Memorandum dated 11.9.1989, we find that in paragraphs 8 and 9, it was directed that the NIC, Ministry of Planning, could be asked to evolve a job assignment for different levels of Data Entry Operators and Programming Staff, which could be adopted by the different Ministries/ Departments with suitable modifications, if necessary, to meet any particular requirements and that all Ministries/Departments were requested to initiate action on priority basis and results of review be reported to Implementation Cell, Department of Expenditure. In paragraph 2 of the Office Memorandum dated 11.9.1989, it is specifically stated that all Ministries/Departments having Electronic Data Processing Posts under their administrative control, would review the designation, pay scales and recruitment qualification of their posts and revise the same in consultation with their Financial Advisers to the extent necessary as per pay structure indicated in paragraph I of the Office Memorandum dated 11.9.1989. It is further stated therein that if found necessary, revision of pay scale of existing posts should be made. It is also stated therein that the revised pay scale should be operative from the date of issuance of the Notification by the concerned Ministry/Department.

10. It was unfortunate that irrespective of such categoric instructions issued in the Office Memorandum dated 11.9.1989, no steps were taken by the petitioners herein for issuance of appropriate Notification nor made an analysis of the nature of work performed by the respondents 2 and 3 herein or any other personnel who were manning the Data Processing post. It is only after the Original Application filed before the Tribunal, the Tribunal directed the NIC to make a study and submit a report as to the nature of job performed by the respondents 2 and 3 in the petitioners' organisation. In such circumstances, when once the NIC who is the authorised body to make a study as to the nature of work performed by the concerned staff and state as to whether such duties and responsibilities performed by them was satisfactory enough to hold that they can be declared as having performed the nature of duties and responsibilities of a Data Processing Staff in any particular category, and the said expert body, namely the NIC has submitted a report before the Tribunal confirming that the respondents 2 and 3 herein did perform such a job and the responsibility, befitting to the post of Data Processing Assistant Grade-B and that too with effect from 11.9.1989, there is no reason why the Tribunal should not have accepted the said report for granting the relief as prayed for by the respondents 2 and 3.

11. Therefore, looked at from any angle, we are not able to appreciate the present contention of the petitioners that de-hors the report of the NIC dated 12.10.2001, confirming the fact that the respondents 2 and 3 herein should be treated as Data Processing Staff and not Data Entry Staff by virtue of the nature of duties and responsibilities discharged by them, with effect from 11.9.1989, the same should not be granted and that such fixation should be granted only from

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1.4.1997.

12. Even in the Writ Petition, no document was placed to show that there was any study carried out by the petitioners nor was any specific Office Memorandum issued based on any such study that the grant of declaration of status of respondents 2 and 3 as Data Processing Assistants Grade-B was to take effect only from 1.4.1997 and that their pay scale be fixed in the scale of pay of Rs.2200-3200 only from that day, namely 1.4.1997.

13. For all the above stated reasons, we do not find any merits in this Writ Petition in order to interfere with the order impugned herein. The Writ Petition therefore fails and the same is dismissed. No costs. In view of the dismissal of the Writ Petition, the petitioners herein are directed to implement the impugned order of the Tribunal, dated 23.11.2001, within three months from the date of receipt of a copy of this order.

cs

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Director General,
   Indian Council of Medical Research,
   Ansari Nagar, P.B.No.4911,
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2. The Director,
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3. The Registrar,
   Central Administrative Tribunal,
   Chennai Bench,
   Chennai-600 104.

+ 1 cc to Mr.R.Parthiban Advocate SR.NO.46574
+ 1 CC to MR.M.T.Arunan Advocare SR.NO.46368

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RD 9.8.07

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